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DEPARTMENT OF HEALTH AND ENVIRONMENT

May 12, 1987

Alice C. Fuerst  
EPA, Region VII  
726 Minnesota Ave.  
Kansas City, KS 66101

Dear Ms. Fuerst:

Our office has received a copy of a letter dated March 30, 1987 from Mr. Peter Keppler on behalf of the Cherokee County potential responsible parties (PRPs) stating in part "that it is neither necessary nor appropriate to apply the Kansas Surface Water Quality Standards in the development ... of any remedial actions at the Cherokee County site". Mr. Keppler has misinterpreted the "natural pollution" provision of the Kansas Water Quality Standards.

The Kansas Surface Water Quality Standards contain a section "K.A.R. 28-16-28c(c)(3)" which addresses the issue of "natural pollution". This section recognizes that naturally occurring minerals may result in some waters containing concentrations of substances (heavy metals for example) that would exceed the criteria for protection of water uses. Where this occurs, the "natural pollution" special condition is intended to prevent the imposition of requirements that the water quality be improved beyond its natural condition. The term "Natural" in this regulation means - "being in a state of nature untouched by the influences of civilization and society". It is difficult to conclude that water quality changes induced by mining to be consistent with this definition of natural and we reject Mr. Keppler's conclusion.

As discussed in earlier meetings, background unimpacted water quality conditions are not known for the Cherokee County site. It may be possible that the concentrations of some naturally occurring minerals in unimpacted waters of this area will be higher than other Kansas sites, however may not exceed Water Quality Standards. We will not require any cleanup project to improve water quality criteria beyond the naturally occurring background concentrations of the Cherokee site. Since these concentrations are not known, we expect the Cherokee County Site study to provide information which can be used to make a reasonable estimate of background unimpacted conditions.



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In previous meetings on this project, we have indicated that KDHE would not agree to some treatment or cleanup scheme (e.g., arbitrary reduction of pollutant loads discharge to the stream or some cleanup measure such as removal of chat piles, seeding of barren soil, etc.) without proper commitments to attaining the objectives of the Kansas Surface Water Quality Standards. We have also stated that the Kansas standards provide, where full attainment of the water quality standards will impair important social and economic development, a means to secure a variance from the standards. The Kansas Department of Health and Environment is however not authorized under the regulations to unilaterally grant a variance. The variance procedure must be requested by the party responsible for the water quality degradation.

The request for variance must include an assessment of the environmental, economic, and social impacts and the financial hardship resulting from full compliance with the water quality standards. Should it be necessary the Cherokee County cleanup study may proceed in the following manner:

1. Define the classification of the affected surface waters.

A classified stream is established at the point where mean summer base flow exceeds 0.1 cfs. (K.A.R. 28-16-28d(b)(3)). In Cherokee County 0.7 square miles of drainage area is needed to produce 0.1 cfs. Water courses which meet this criteria are protected for aquatic life support, agricultural water supply, domestic water supply, industrial water supply, recreation, and groundwater recharge.

Please note that criteria for domestic water use is applied at the point of diversion for that use. Classified waters are also to meet the specific criteria (K.A.R. 28-16-28e(c)) whenever stream flow is greater than either 1.0 cfs or the seven day low flow expected to occur once in ten years. When stream flow is less than this value, classified waters must meet the general criteria defined by K.A.R. 28-16-28e(b). All water courses whether or not the 0.1 cfs classification criteria is met, must meet the general criteria defined by K.A.R. 28-16-28e(b)(1).

2. Establish a cleanup plan.

Once the affected waters are appropriately classified, a cleanup plan needs to be established. This should be an array of available cleanup measures and their accompanying costs associated with the resulting improvements in water quality. If the cleanup plan is constructed incrementally, in other words, if a series of measures are needed to achieve the cleanup, it should be possible to construct a relationship between cleanup costs and water quality improvements. The cleanup plan should be prepared in such a manner that all feasible cleanup measures are identified



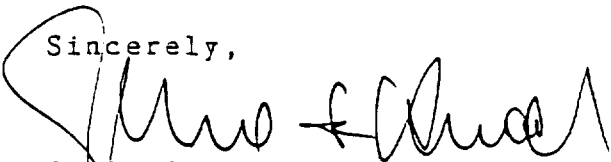
that will result in achievement of the water quality standards. This information would be used in making a decision on the merits of the variance request.

3. Establish unimpacted water quality conditions.

Recognizing that this area may indeed have naturally occurring high concentrations of some substances, it would be appropriate to estimate what these concentrations are. Once this is known, the water quality criteria of the area can be appropriately modified through the use of site specific criteria (K.A.R. 28-16-28e and K.A.R. 28-16-28f(g)). Even if site specific criteria were established to accommodate "natural pollution" the cleanup plan would need to be based on the results of items 1 and 2.

Should you have any questions, please contact me. Don Snethen (ext. 255) or Larry Hess (ext. 252) are also familiar with the project.

Sincerely,



Gyula F. Kovach, Manager  
Bureau of Water Protection  
Division of Environment

GFK/LH/lv  
GK22

c: Jane Werholtz, EPA  
Peter Keppler, AMAX, Inc.  
1707 Cole Boulevard  
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State of Kansas

DEPARTMENT OF HEALTH AND ENVIRONMENT  
Division of Environment - Bureau of Water Protection

M E M O R A N D U M

TO: Gyula Kovach, Dennis Murphey, Jim Power and Pat Casey  
FROM: Don Snethen  
SUBJECT: Cherokee Co. Project Application of Kansas Water  
Quality Standards  
DATE: May 8, 1987

We recently received a copy of a letter (Attachment 1) from Mr. Peter Keppler representing a number of potential responsible parties stated that Kansas Water Quality Standards do not apply to this project. We have also received a copy of EPA's response (Attachment 2).

We have reviewed Mr. Keppler's letter and the Kansas Water Quality Standards and reject Mr. Keppler's conclusion. Reasons are presented in the attached letter (Attachment 3).

Please review and comment.

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Attachments

